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2019 APR -4 PM 1:16

VIRGINIA: IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN T. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA

Allison Moore

Plaintiff

vs.

Stephen Moore

Defendant

Civil Action No. CL 2010 - 10006

Previous Chancery No. CH

FRIDAY MOTIONS DAY - RESPONSE/OPPOSITION TO MOTION

Title of Motion(s) to which Response is filed: Motion to Seal

Responding Party: The New York Times Co., Guardian News & Media LLC, Dow Jones & Co. and WP Co., LLC

DATE TO BE HEARD: April 5, 2019

Time Estimate (combined, no more than 30 minutes): 15 minutes

Responding Party will use *Court Call* telephonic appearance: ☐ Yes ☒ No

RESPONSE by: Matthew E. Kelley

Ballard Spahr LLP

Printed Attorney Name/ Responding Party Name

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CERTIFICATIONS

☒ I certify that I have in good faith conferred or attempted to confer with other affected parties in an effort to resolve the subject of the motion without Court action; and,

☒ I have read, and complied with, each of the Instructions for Responding Party on the reverse side of this form.

[Signature]
Responding Party/Counsel of Record

CERTIFICATE OF SERVICE

I certify on the 4th day of April, 2019, a true copy of the foregoing Response was
☐ mailed ☐ faxed ☒ delivered to all counsel of record pursuant to the provisions of Rule 4:15(e) of the Rules of the Supreme Court of Virginia.

[Signature]
Responding Party/Counsel of Record

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ALLISON MOORE

Plaintiff,

v.

STEPHEN MOORE

Defendant.

Case No. CL-2010-10006

**OPPOSITION TO MOTION TO SEAL BY NON-PARTIES
THE NEW YORK TIMES COMPANY, GUARDIAN NEWS & MEDIA LLC
AND DOW JONES & COMPANY, INC.**

Non-parties The New York Times Company (“The Times”), Guardian News & Media LLC (“The Guardian”), and Dow Jones & Co., publisher of The Wall Street Journal, (“Dow Jones”) by their undersigned counsel, hereby oppose Plaintiff Allison Moore’s motion to seal the case file in this matter and respectfully request that this Court enter an order denying the motion, dissolving the temporary injunction and unsealing the case file, and in support thereof, state as follows:

1. Last month, President Donald Trump announced his intention to appoint Defendant Stephen Moore to the Board of Governors of the Federal Reserve. *See* Jim Tankersley, *Trump Taps Fed Critic Stephen Moore for Board Seat*, N.Y. TIMES (Mar. 22, 2019), <https://www.nytimes.com/2019/03/22/us/politics/stephen-moore-federal-reserve.html>. News organizations including The Times, The Guardian, and Dow Jones began reporting on Mr. Moore’s background to inform the public about a potential nominee to a 14-year term on the board that sets monetary policy for the United States. This reporting serves the vital public

interest in knowing details regarding Mr. Moore's financial, personal and professional background, given that he could also have a role in the supervision and regulation of the financial system, including overseeing the nation's largest banks. In other words, the public deserves to know how an official responsible for setting interest rates and regulating the banking industry handles his own money.

2. In the course of reporting on the potential Federal Reserve nominee, a journalist for The Guardian reviewed the case file in this matter and obtained photocopies of several pleadings and orders. The Guardian then published a news report about the finding that Mr. Moore was in contempt for failing to make certain payments to Plaintiff and directing Mr. Moore to pay Plaintiff what he owed her. *See* Jon Swaine & David Smith, *Trump Fed pick was held in contempt for failing to pay ex-wife over \$300,000*, The Guardian (Mar. 30, 2019), <https://www.theguardian.com/us-news/2019/mar/30/trump-stephen-moore-federal-reserve-board>. The Guardian also posted online the public records it obtained from the case file, including the Complaint and Response and two orders regarding Mr. Moore's failure to meet his financial obligations to his ex-wife. *See* <https://www.documentcloud.org/public/search/projectid:43206-Stephen-Moore-court-filings>.

3. On April 1, two days after The Guardian published the article regarding Mr. Moore, Plaintiff filed a motion to seal the court file in this matter. This Court issued a temporary injunction sealing the file pending the hearing scheduled for April 5, 2019.

4. The injunction should be dissolved for two reasons. First, as a threshold matter, the Court lacks jurisdiction to enter a sealing order because this case was concluded long ago. Second, on the merits, neither party can overcome the presumption under Virginia law and the First Amendment that court records are open to public inspection. There is no overriding interest

sufficient to justify the wholesale sealing of the court file, and sealing is simply not warranted when much of the material in the file already is public.

5. On the threshold question of jurisdiction, now-retired Judge Thacher held, pursuant to Supreme Court Rule 1:1, a Circuit Court lacks jurisdiction to seal a divorce case file more than 21 days after a final decree has been entered. *Martinez v. Martinez*, 79 Va. Cir. 185, 186 (Fairfax Cty. 2009). The provision in Code § 20-124 allowing for the sealing of a case file does not extend the Circuit Court’s jurisdiction beyond the limit imposed by Rule 1:1. *Id.* Although the temporary sealing of the case file has prevented The Times, The Guardian and Dow Jones from determining the precise date of the final decree in this matter, it is clear that date was far more than 21 days before April 1, 2019. This Court therefore lacks jurisdiction to enter the sealing order that Plaintiff seeks.

6. In this case, the jurisdictional limitation also aligns with practical sense. Sealing a case file long after it has been closed would not protect any party’s interest because much of the information in the file already is a matter of public record. To the extent that reopening the case file would invade a party’s privacy or cause emotional or financial damage, the harm has already occurred. As the maxim instructs, “[t]he law does not require a vain and useless thing.” *McMicking v. Schields*, 238 U.S. 99, 103 (1915).

7. Even if the Court had jurisdiction to seal a closed divorce case file, however, it should not do so. Since the early 19th Century, Virginia has codified the common-law presumption that the public has access to all judicial records, including, in civil cases, pleadings, motions and exhibits filed by the parties and the orders of the court. *Shenandoah Pub. House, Inc. v. Fanning*, 235 Va. 253, 258-59, 368 S.E.2d 253, 256 (1988). That presumption is currently embodied in Va. Code § 17.1-208, which states that “[e]xcept as otherwise provided by

law, any records that are maintained by the clerks of the circuit courts shall be open to inspection in the office of the clerk by any person.” Given the long history and the constitutional underpinnings of this presumption of openness, the Virginia Supreme Court has held that “to overcome the presumption, the moving party must bear the burden of establishing an interest so compelling that it cannot be protected reasonably by some measure other than a protective order,” and “any such order must be drafted in the manner least restrictive of the public’s interest.” *Fanning*, 235 Va. at 258-59, 368 S.E.2d at 256.

8. Virginia Code § 20-124 provides the Court with discretion to seal the record of divorce proceedings upon motion by a party. However, as the Court of Appeals has held, a party’s mere desire to seal divorce proceedings “is not sufficient to override the presumption of openness. Nor do we believe that risks of damage to professional reputation, emotional damage, or financial harm, stated in the abstract, constitute sufficient reasons to seal judicial records.” *Shiembob v. Shiembob*, 55 Va. App. 234, 244, 685 S.E.2d 192, 197 (2009) (quoting *Fanning*, 235 Va. at 259, 368 S.E.2d at 256). The Court of Appeals in *Shiembob* affirmed a trial court order unsealing the record in a divorce action, noting that “Husband’s undefined concern for his professional reputation does not rebut the presumption of openness of judicial records.” *Id.* 55 Va. App. at 244, 685 S.E.2d at 198.

9. Similarly, the Circuit Court for Madison County denied a motion to seal divorce case records, explaining the strong public interest in keeping such records open:

[I]n our democracy, all aspects of the judicial branch of government are open for citizens to observe and inspect. Unfortunately, for some this often includes information about their lives that is arguably personal or embarrassing. However, this does not justify closing a hearing, sealing documents, or prohibiting public access to any part of a file. The principle of open access far outweighs the privacy benefits that litigants receive when requests like this are granted. Thus, an order of sequestration should be entered only in unusual cases and based on exceptional circumstances.

Hawkins v. Hawkins, 82 Va. Cir. 351, 351-52 (Madison Cty. 2011).

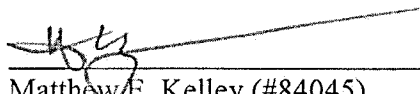
10. The same result is appropriate here. The public interest in these records is particularly robust, given that Mr. Moore is a public figure who may be nominated to one of the most economically powerful positions in the United States. No party can assert the exceptional circumstances sufficient to override the presumption that this entire case file remain part of the public record. To the extent Plaintiff can meet her burden to demonstrate that the presumption of openness is overcome with regard to *specific information* within the divorce case file, that specific material should be redacted rather than an overbroad sealing order maintained.

WHEREFORE, non-parties The New York Times Company, Guardian News & Media LLC, and Dow Jones & Co. respectfully request that this Court deny the motion to seal and enter an order dissolving the temporary injunction and reopening the record in this matter to public inspection.

Dated: April 4, 2019

Respectfully submitted,

BALLARD SPAHR LLP



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*Counsel for The New York Times Company,
Guardian News & Media LLC, and
Dow Jones & Co.*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Opposition to Sealing Case has been served upon the following via electronic mail and overnight delivery on this 4th day of April, 2019:

Allison M. Moore
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allisonmoore1@gmail.com

Stephen K. Moore
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